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Safeway, Inc.  
10

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 MICHAEL RODMAN, on behalf of himself and  
15 all others similarly situated,

16 Plaintiff,

17 v.

18 SAFEWAY, INC.,

19 Defendant.  
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No.: CV-11-03003-JST (JCS)

**DECLARATION OF MICHAEL  
McCREADY IN SUPPORT OF  
PLAINTIFF'S ADMINISTRATIVE  
MOTION RE SEALING OF DOCUMENTS  
PURSUANT TO CIV.L.R. 7-11 AND 79-5  
[FOR PLAINTIFF'S MOTION FOR  
DISCOVERY SANCTIONS] (DOCKET 433)**

Date: June 16, 2016  
Time: 2:00 p.m.  
Crtrm.: 9 – 19th Floor  
Trial Date: October 5, 2015

Judge: Hon. Jon S. Tigar  
Complaint filed: June 17, 2011

1 I, Michael McCready, hereby declare:

2  
3 1. I am a Vice President, E-Commerce, for Safeway Inc. (“Safeway”). I submit this  
4 Declaration in support of sealing certain documents identified in PLAINTIFF’S  
5 ADMINISTRATIVE MOTION RE SEALING OF DOCUMENTS PURSUANT TO CIV.L.R. 7-11  
6 AND 79-5 [FOR PLAINTIFF’S MOTION FOR DISCOVERY SANCTIONS] (hereafter  
7 “Administrative Motion re Sealing Documents”) and the associated Declaration of Timothy  
8 Matthews (“Matthews Declaration”). I have personal knowledge of the facts set forth in this  
9 declaration and, if called as a witness, could and would competently testify to these statements.

10 2. I have reviewed the First Amended Complaint Plaintiff Michael Rodman (“Plaintiff”)  
11 filed against Safeway. His claims generally address how “pricing” works in the grocery industry  
12 and, more specifically, within Safeway. They implicate several key operational, financial and  
13 strategic elements of Safeway’s business, including its customer and transaction information, pricing  
14 policies, pricing strategies, methods for setting prices, and its strategic business options and  
15 decision-making processes.

16 3. A grocer’s pricing, pricing strategy, programs, confidential business practices, and  
17 decision-making can be the difference between a successful and unsuccessful business. Retail  
18 grocery pricing is also very complicated. It can change from store to store, area to area and region to  
19 region. There are, among other things, high/low retailers (such as Safeway) and low price retailers  
20 (such as Wal-Mart). Pricing can also involve numerous concepts, including, but not limited to, list  
21 pricing, regular retail pricing, special pricing, promotional pricing, manufacturer’s discounts,  
22 coupons or some combination of these. A retailer’s pricing may also involve strategic decision  
23 making for purposes of competition, providing consumers choice or overall business practice and/or  
24 strategy.

25 4. Safeway has produced numerous documents in this action that are not available and  
26 have never been disclosed to the general public. These documents are the subject of continued  
27 efforts by Safeway to maintain them as confidential business information and trade secrets.  
28 Disclosure of the information in these documents would be harmful to Safeway and valuable to its

1 competitors, assisting and allowing them to compete unfairly with Safeway through access to and  
2 understanding of Safeway's pricing policies, methods, business practices, strategies, and decision-  
3 making processes. Safeway's competitors could also use this information to understand Safeway's  
4 business and pricing strategies, as well as predict its future strategies and practices.

5 5. Safeway is committed to protecting and maintaining these documents and information  
6 in confidence for its own business purposes and for the confidentiality rights of its customers and  
7 business partners. Safeway.com restricts access to these documents and information, and protects its  
8 information and systems through a private network. Safeway.com also restricts access to its office  
9 space, requiring a key card to access its business offices. Employee work stations are password  
10 protected. Safeway.com employees also go through privacy training that includes building and  
11 document security. Safeway also enters into nondisclosure agreements with its vendors and  
12 agreements with its employees requiring they abide by the building and document security protocols.

13 6. In connection with its Motion for Sanctions, Plaintiff submitted the Declaration of  
14 Steven Schwarz ("Schwarz Declaration") which I understand attaches several exhibits that are  
15 identified in Plaintiff's Administrative Motion re Sealing Documents (and the associated Matthews  
16 Declaration) as containing Safeway's confidential information. I have reviewed these documents,  
17 and the following documents that Plaintiff identified as potentially containing Safeway's sealable  
18 information may be filed publicly: Schwarz Declaration Exhs. **3, 4, 5, 15, 16, 17, 19, 21, 28, 30.**

19 7. Below, this Declaration addresses why the remainder of the documents Plaintiff  
20 identified as containing Safeway's sealable information should be filed under seal in part, or in their  
21 entirety. The documents and information discussed below include valuable internal and  
22 competitively sensitive information that is not otherwise made available to the public because its  
23 disclosure would burden Safeway and could provide an unfair advantage to competitors.

24 8. Portions of Exhibit 2 to the Schwarz Declaration contain internal, confidential  
25 business practice information that relates to markup/pricing and customer purchase and order data,  
26 which, if known to Safeway's competitors could enable them to unfairly compete against Safeway.  
27 This Exhibit also includes a portion that relates to a specific employee's medical condition and  
28 related surgery, which may be confidential to that particular employee, has no bearing on any of the

1 issues in this case, and if disclosed publicly, could burden the employee and impinge on the  
2 confidentiality of his medical history. The Exhibit also includes a portion that relates to a former  
3 Safeway employee's new job information, which may be confidential to that employee and has no  
4 bearing on any of the issues in this case. Safeway is providing herewith a copy of Exhibit 2 with  
5 proposed redactions.

6 9. Exhibit 7 to the Schwarz Declaration is a version of Internet registration pages with  
7 internal notes and explanations reflecting confidential online sales and promotion, design and  
8 business strategy. If known to Safeway's competitors, this draft with confidential internal edits  
9 would enable them to unfairly compete based on knowledge of Safeway's internal business strategy.

10 10. Exhibit 8 to the Schwarz Declaration is an internal, confidential PowerPoint slide  
11 deck that reflects Safeway's internal strategy regarding registration and promotional online  
12 materials, including internal edits, notes and recommendations for revisions and improvements to  
13 functionality, design and implementation of webpages and the registration process. The confidential  
14 business information in this document should not be made public to competitors who could use it to  
15 compete unfairly with Safeway.

16 11. Exhibit 9 to the Schwarz Declaration, entitled Safeway.com Registration Content v.1,  
17 is a draft document reflecting confidential and internal registration strategy, planning, and  
18 implementation information, including regarding the logical flow of a registration process under  
19 development. If this information was disclosed publicly, it would place Safeway's competitors at an  
20 advantage because they would have access to information concerning Safeway's online business  
21 practices, strategy and planning information when Safeway does not have the same access to its  
22 competitors' similar information.

23 12. Exhibits 10 and 11 to the Schwarz Declaration are internal drafts of website  
24 registration pages with confidential notes and proposed revisions. These documents reflect  
25 Safeway's confidential marketing and business planning information, which Safeway has attempted  
26 to protect from public disclosure because it could provide competitors an advantage.

27 13. Exhibit 12 to the Schwarz Declaration is a draft document reflecting confidential,  
28 internal notes and directions relating to certain sales terms and conditions. The document relates to

1 Safeway's confidential business practices, sales and marketing strategy and should not be disclosed  
2 publicly to competitors who could make use of the information to unfairly compete against Safeway.

3 14. Exhibit 13 to the Schwarz Declaration is a confidential Safeway marketing and  
4 strategy and specifications document with internal notes and questions regarding website content and  
5 a promotional marketing campaign. Public disclosure of this document could give competitors an  
6 advantage by providing a window into Safeway's confidential business practices.

7 15. Exhibit 14 to the Schwarz Declaration is a confidential, internal PowerPoint slide set  
8 of a website demonstration, with reflects Safeway's internal marketing analysis and which, if known  
9 to Safeway's competitors could enable them to unfairly compete with Safeway.

10 16. Exhibits 23 and 24 to the Schwarz Declaration contain and/or constitute source code  
11 relating to the implementation of Safeway's online business. Safeway's source code is a trade secret  
12 and should not be disclosed publicly.

13 17. Exhibit 27 of the Schwarz Declaration is copy of DEFENDANT SAFEWAY INC.'S  
14 RESPONSES TO PLAINTIFF'S FOURTH SET OF INTERROGATORIES. These responses relate  
15 to Safeway's highly confidential pricing spreadsheets, including their contents and internal uses, and  
16 also reflect Safeway's confidential price-related business practices that are not otherwise made  
17 available to the public.

18 18. Exhibit 29 of the Schwarz Declaration is an email exchange, portions of which reflect  
19 highly confidential information concerning how Safeway analyzes variance as well as Safeway's  
20 internal business practices, structure and online strategies. Portions of the document also contain  
21 information about a direct competitor, reflecting how Safeway evaluates itself against its  
22 competitors. The information contained in these portions of the document is confidential and if  
23 disclosed publicly could provide competitors an advantage and the ability to unfair compete against  
24 Safeway.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct.

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4 DATED: April 11, 2016

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6 /s/ Michael McCready  
Michael McCready  
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9 Pursuant to Local Rule 5-1(i)(3), I certify concurrence in the filing of this Declaration from  
10 signatories for whom a signature is indicated by a “conformed” signature /s/.

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12 DATED: April 11, 2016

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14 /s/ Adaline J. Hilgard  
Adaline J. Hilgard  
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